

OFFICE OF THE FEDERAL DEFENDER
EASTERN DISTRICT OF CALIFORNIA
801 I STREET, 3rd FLOOR
SACRAMENTO, CALIFORNIA 95814
(916) 498-5700 Fax: (916) 498-5710

Daniel J. Broderick
Federal Defender


Linda Harter
Chief Assistant Defender

May 6, 2008

FILED

MAY 08 2008

Mr. Mark Eibert
Attorney at Law
P.O. Box 1126
Half Moon Bay, CA 94109

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY  _____
DEPUTY CLERK

Re: **Messer v. Runnels**
Civ.S-03-033-LKK/JFM

Dear Mr. Eibert:

This will confirm your appointment as counsel by the Honorable Kimberly J. Mueller, U.S. Magistrate Judge, to represent the above-named appellant. You are attorney of record until such time as you are relieved or other action is taken to appoint a different attorney.

Enclosed is CJA 20 form, your Order of Appointment and Voucher for services rendered. Also enclosed is an instruction sheet discussing the use of the forms.

If we may be of any further assistance regarding the processing of the enclosed form, preparation of form CJA 21 for expert services, or in reference to any other matter pertaining to this case, please feel free to call upon us at any time.

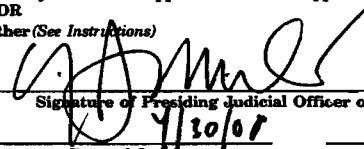
Very truly yours,


CYNTHIA L. COMPTON
Operations Administrator

:clc
Enclosures

cc: Clerk's Office
Ninth Circuit Court of Appeals

CJA 20 APPOINTMENT OF AND AUTHORITY TO PAY COURT APPOINTED COUNSEL (5-99)

1. CIR./DIST./ DIV. CODE 09C		2. PERSON REPRESENTED Messer, Joseph		VOUCHER NUMBER	
3. MAG. DKT./DEF. NUMBER		4. DIST. DKT./DEF. NUMBER Civ. S-03-033-LKK/KJM		5. APPEALS DKT./DEF. NUMBER 07-15151	
7. IN CASE/MATTER OF (Case Name) Messer v. Runnels		8. PAYMENT CATEGORY <input type="checkbox"/> Felony <input type="checkbox"/> Petty Offense <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Appeal		9. TYPE PERSON REPRESENTED <input type="checkbox"/> Adult Defendant <input checked="" type="checkbox"/> Appellant <input type="checkbox"/> Juvenile Defendant <input type="checkbox"/> Appellee <input type="checkbox"/> Other:	
10. REPRESENTATION TYPE (See Instructions) CA					
11. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) If more than one offense, list (up to five) major offenses charged, according to severity of offense. Appeal from the denial of a habeas corpus					
12. ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix), AND MAILING ADDRESS Mark Eibert, Esq. P.O. Box 1126 Half Moon Bay, CA 94109 Telephone Number: (650) 638-2380			13. COURT ORDER <input type="checkbox"/> O Appointing Counsel <input type="checkbox"/> C Co-Counsel <input type="checkbox"/> F Subs For Federal Defender <input type="checkbox"/> R Subs For Retained Atty. <input type="checkbox"/> P Subs For Panel Attorney <input type="checkbox"/> Y Standby Counsel Prior Attorney's Name: _____ Appointment Date: _____ <input type="checkbox"/> Because the above-named person represented has testified under oath or has otherwise satisfied this Court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in Item 12 is appointed to represent this person in this case, OR <input type="checkbox"/> Other (See Instructions)		
14. NAME AND MAILING ADDRESS OF LAW FIRM (Only provide per instructions)			Signature of Presiding Judicial Officer or By Order of the Court  Date of Order: 4/30/08 Nunc Pro Tunc Date: 4/16/08 Repayment or partial repayment ordered from the person represented for this service at time of appointment. <input type="checkbox"/> YES <input type="checkbox"/> NO		

CLAIM FOR SERVICES AND EXPENSES			FOR COURT USE ONLY			
CATEGORIES (Attach itemization of services with dates)		HOURS CLAIMED	TOTAL AMOUNT CLAIMED	MATH/TECH. ADJUSTED HOURS	MATH/TECH. ADJUSTED AMOUNT	ADDITIONAL REVIEW
In Court	15. a. Arraignment and/or Plea					
	b. Bail and Detention Hearings					
	c. Motion Hearings					
	d. Trial					
	e. Sentencing Hearings					
	f. Revocation Hearings					
	g. Appeals Court					
	h. Other (Specify on additional sheets)					
(RATE PER HOUR = \$ \$100.00) TOTALS:						
Out of Court	16. a. Interviews and Conferences					
	b. Obtaining and reviewing records					
	c. Legal research and brief writing					
	d. Travel time					
	e. Investigative and other work (Specify on additional sheets)					
(RATE PER HOUR = \$ \$100.00) TOTALS:						
17. Travel Expenses (lodging, parking, meals, mileage, etc.)						
18. Other Expenses (other than expert, transcripts, etc.)						
GRAND TOTALS (CLAIMED AND ADJUSTED):						
19. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE FROM: _____ TO: _____			20. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION		21. CASE DISPOSITION	
22. CLAIM STATUS <input type="checkbox"/> Final Payment <input type="checkbox"/> Interim Payment Number _____ <input type="checkbox"/> Supplemental Payment Have you previously applied to the court for compensation and/or reimbursement for this case? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, were you paid? <input type="checkbox"/> YES <input type="checkbox"/> NO Other than from the Court, have you, or to your knowledge has anyone else, received payment (compensation or anything of value) from any other source in connection with this representation? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, give details on additional sheets. I swear or affirm the truth or correctness of the above statements. Signature of Attorney _____ Date _____						
APPROVED FOR PAYMENT - COURT USE ONLY						
23. IN COURT COMP.	24. OUT OF COURT COMP.	25. TRAVEL EXPENSES	26. OTHER EXPENSES	27. TOT. AMT. APPR./CERT.		
28. SIGNATURE OF THE PRESIDING JUDICIAL OFFICER			DATE:	28a. JUDGE/MAG. JUDGE CODE		
29. IN COURT COMP.	30. OUT OF COURT COMP.	31. TRAVEL EXPENSES	32. OTHER EXPENSES	33. TOTAL AMT. APPROVED		
34. SIGNATURE OF CHIEF JUDGE, COURT OF APPEALS (OR DELEGATE) Payment approved in excess of the statutory threshold amount.			DATE	34a. JUDGE CODE		

FILED

UNITED STATES COURT OF APPEALS

APR 07 2008

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOSEPH MESSER,

Petitioner - Appellant,

v.

DAVID L. RUNNELS, Warden, et. al.,

Respondents - Appellees.

No. 07-15151

D.C. No. CV-03-00033-LKK/KJM
Eastern District of California,
Sacramento

ORDER

Before: B. FLETCHER and HAWKINS, Circuit Judges.

The request for a certificate of appealability is granted with respect to the following issues: whether appellant was denied due process based on 1) the trial court's jury instruction on voluntary manslaughter; and 2) the trial court's refusal to instruct the jury on the lesser included offense of involuntary manslaughter. *See* 28 U.S.C. § 2253(c)(3); *see also* 9th Cir. R. 22-1(e). As to the remaining issues, appellant's request for a certificate of appealability is denied without prejudice to renewal in the opening brief, pursuant to Ninth Circuit Rule 22-1(e).

Appellant is sua sponte appointed counsel on appeal. Counsel will be appointed by separate order. If appellant does not wish to have appointed counsel,

TJH/COA

07-15151

appellant shall file a motion asking to proceed pro se within 21 days of the date of this order.

The Clerk shall serve a copy of this order on Daniel Broderick, Federal Public Defender, 801 I Street, 3rd Floor, Sacramento, California 95814, who will locate appointed counsel. The district court shall provide the Clerk of this court with the name and address of appointed counsel by facsimile transmission (FAX: (415) 355-8111) within 14 days of locating counsel.

The opening brief is due July 16, 2008; the answering brief is due August 15, 2008; the optional reply brief is due within 14 days after service of the answering brief.

Because there were no hearings in the district court, the clerk of that court shall forward the certificate of record immediately. *See* 9th Cir. R. 11-2.

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